



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Outside Teaching Activity
JAMES
FROM: James Payne PAYNE
Designated Agency Ethics Official and Deputy General Counsel for
Environmental Media and Regional Law Offices
TO: Carlton Waterhouse
Deputy Assistant Administrator
Office of Land and Emergency Management

Digitally signed by JAMES
PAYNE
Date: 2021.03.18
14:48:07 -04'00'

I have received your request to continue to engage in compensated outside employment as an adjunct professor at the Howard University School of Law during the Spring semester of 2021. You will be teaching a property law course. Based on the information you have provided, I am approving your request as consistent with 5 Code of Regulations (C.F.R.) Part 2635, Subpart H, and as required by 5 C.F.R. § 2636.307. I want to remind you of the relevant ethics obligations as you undertake this activity:

Financial Conflicts of Interest and Impartiality Rules

Because you will be compensated by Howard University, you may be considered to be an employee (as opposed to an independent contractor). If so, you have an imputed financial interest in the law school pursuant to the criminal conflict of interest law, 18 United States Code (U.S.C.) § 208. This means that you may not participate in an EPA or other government matter that will have a direct and predictable effect on the law school's financial interests. As such, you may not participate personally and substantially in a particular matter that affects the financial interests of the law school as a specific party, such as a grant or procurement, or a decision for the Agency to financially support a conference at the law school. Also, you may not participate in an EPA matter of general applicability that will affect the law school's financial interests as a member of a discreet and identifiable class, such as a regulatory or legislative matter affecting all laws schools.

In addition, or, in the alternative if you are not an "employee," you have a "covered relationship" with the law school during the term of your teaching activity and for a year after the activity ends pursuant to the impartiality regulations. This means that

you may not participate in a specific party matter at EPA in which the law school is a party or represents a party if a reasonable person will question your impartiality, unless you are authorized to do so by me or Justina Fugh. See 5 C.F.R. § 2535.502. For example, you may not participate in your official capacity in a decision to grant a meeting with a law school representative, participate in, or recommend a colleague to participate in, a conference at the law school.

Representational restrictions

You are also prohibited by a criminal law from acting as an agent or attorney for the law school before a federal agency or court in any matter in which the United States is a party or has a direct and substantial interest. See 18 U.S.C § 205. In your capacity as an adjunct faculty member, you may not appear before or communicate with an officer or employee of a federal agency or court on behalf of the law school, which includes contacting federal employees to speak before your law school classes or at other law school activities in their official capacities.

Misuse of position

You may not use government time or resources, such as the official time of a subordinate, or your official title, other than as part of general biographical information that is given no more prominence than other aspects of your professional or educational background. Also, you may not use or disclose non-public information for the furtherance of this activity, or otherwise use your official position for the private gain of the law school. See *generally*, 5 C.F.R. Part 2635, Subpart G.

Outside earned income limitation

Because you are a non-career member of the Senior Executive Service, your outside earned income from all sources during 2021 may not exceed \$25,596ⁱ.

Finally, you will have to report both the income and the outside teaching position on your relevant financial disclosure form. As always, if you have any questions, please feel free to contact me at 202-564-0212 or Justina Fugh at 202-564-1786.

ⁱ This amount is pro rated, as required by 5 C.F.R. § 2636.304(b).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

September 29, 2021

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Outside Activity
JUSTINA
FROM: Justina Fugh FUGH
Alternate Designated Agency Ethics Official and
Director, Ethics Office
TO: Jennifer Macedonia
Deputy Associate Administrator
Office of Policy

Digitally signed by
JUSTINA FUGH
Date: 2021.09.29
11:42:51 -04'00'

I have received your request to engage in an uncompensated one-time outside activity as a guest lecturer at a University of Chicago Law/Economics class about the history of the Acid Rain Program. Based on the information you have provided and having received the concurrence of your immediate supervisor and the Chief of Staff, I am approving your request as consistent with 5 C.F.R. Part 2635, Subpart H. I want to remind you of the relevant ethics obligations as you undertake this activity:

Misuse of position

You may not use government time, non-public information, or other resources, such as the official time of a subordinate, or your official title, other than as part of general biographical information that is given no more prominence than other aspects of your professional or educational background. You should offer a disclaimer that you are serving in your personal capacity and that the EPA or federal government does not necessarily endorse the views that you are expressing during the lecture. Also, you may not use your official position for the private gain of the school. See *generally*, 5 C.F.R. Part 2635, Subpart G.

Given that this is a one-time event, you will not have to report it on your next financial disclosure form. As always, if you have any questions, please feel free to contact me at 202-564-0212 or Justina Fugh at 202-564-1786.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Outside Teaching Activity
JAMES
FROM: James Payne **PAYNE** Digitally signed by JAMES PAYNE
Date: 2021.03.18 14:49:05 -04'00'
Designated Agency Ethics Official and Deputy General Counsel for
Environmental Media and Regional Law Offices

TO: Victoria Arroyo
Associate Administrator
Office of Policy

I have received your request to engage in an uncompensated outside teaching activity at the Georgetown University Law Center during the Spring semester of 2021. You will be teaching a course entitled, "*Advanced Environmental Law: the Law of Global Climate Change*." Based on the information you have provided, I am approving your request as consistent with 5 Code of Regulations (C.F.R.) Part 2635, Subpart H, and as required by 5 C.F.R. § 2636.307. I want to remind you of the relevant ethics obligations as you undertake this activity:

Impartiality Rules

You have a "covered relationship" with the law school during the term of your teaching activity and for a year after the activity ends pursuant to the impartiality regulations. This means that you may not participate in a specific party matter at EPA in which the law school is a party or represents a party if a reasonable person will question your impartiality, unless you are authorized to do so by me or Justina Fugh. See 5 C.F.R. § 2535.502. For example, you may not participate in your official capacity in a decision to grant a meeting with a law school representative, participate in, or recommend a colleague to participate in, a conference at the law school.

Representational restrictions

You are also prohibited by a criminal law from acting as an agent or attorney for the law school before a federal agency or court in any matter in which the United States is a party or has a direct and substantial interest. See 18 U.S.C. § 205. In your capacity as an adjunct faculty member, you may not appear before or communicate with an officer or employee of a federal agency or court on behalf of the law school,

which includes contacting federal employees to speak before your law school classes or at other law school activities in their official capacities.

Misuse of position

You may not use government time, non-public information, or other resources, such as the official time of a subordinate, or your official title, other than as part of general biographical information that is given no more prominence than other aspects of your professional or educational background. You should offer a disclaimer that you are teaching the course in your personal capacity and that the EPA or federal government does not necessarily endorse the views that you are expressing during the course. Also, you may not use your official position for the private gain of the law school. See *generally*, 5 CFR Part 2635, Subpart G.

Finally, you will have to report the outside teaching position on your relevant financial disclosure form. As always, if you have any questions, please feel free to contact me at 202-564-0212 or Justina Fugh at 202-564-1786.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

August 2, 2021

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Outside Activity
JUSTINA
FROM: Justina Fugh FUGH
Alternate Designated Agency Ethics Official
TO: Susannah Weaver
Senior Counselor

Digitally signed by
JUSTINA FUGH
Date: 2021.08.02
16:30:42 -04'00'

I have received your request to serve on the Georgetown University Law Center's (GULC) Board of Visitors as an outside activity. In this uncompensated position, you serve as an officer or director and provide advice to the Dean of the Law Center on how to strengthen their teaching, scholarship and service and also to increase and strengthen the financial resources of the Law Center. Based on the information you have provided, I am approving your request as consistent with 5 C.F.R. Part 2635, Subpart H, provided that you are not identified solely with reference to your EPA affiliation. Please note that, generally, an approval for outside employment remains valid for five years, though you must request a new approval should there be a change in the nature or scope of your duties.

I have set forth below a reminder about several ethics principles:

Financial Conflicts of Interest

Because you serve in a fiduciary role, you have a financial conflict of interest with GULC. You cannot participate in your EPA duties in any matter that will have a direct and predictable financial effect upon the school. You cannot work on particular matters that involves GULC as a specific party (e.g., whether the General Counsel should accept an invitation to speak at the University or for you to interview GULC law school students for OGC summer honors positions), nor can you work on particular matters of general applicability (e.g., a grant proposal to which all law schools might apply if GULC is an expected applicant).

You have already and should continue to report this position on your public financial disclosure report.

Representation

Don't forget, you are generally prohibited by a criminal law from representing another entity back to the federal government in any matter in which the United States is a party or has a direct and substantial interest. This representational conflict of interest statute applies even though you are uncompensated. See 18 USC § 205. In your capacity on the Board of Visitors, you cannot contact the US government or its employees on behalf of GULC, which also precludes contacting federal employees to speak in their official capacities.

Misuse of Position

Be mindful about the Agency's [Limited Personal Use of Equipment policy](#). Avoid using EPA equipment -- including phones, workspace, computer or time -- in connection with this activity. Should you refer to your EPA position and title, then you may do so as one of at least three biographical details, with EPA not having any undue prominence. See 5 C.F.R. § 2635.807(b). As indicated earlier, I noticed that the [GULC website](#) lists you solely with reference to your EPA affiliation. Please take steps immediately to notify GULC to change that designation. You are not serving in your official EPA capacity.

Since we are still teleworking, be mindful of the fact that your home is now your federal workplace. When you are "on the EPA clock" (that is, your duty hours), focus on EPA work only. You must be careful to delineate between your official time and use of our resources from your personal time. Avoid using EPA equipment, including the computer or email address, in connection with your outside activity.

Fundraising

Because the Board of Visitors appear to engage in fundraising for GULC, please note that, as a federal employee, you now have certain additional restrictions. Pursuant to 5 C.F.R. § 2635.808(c), you cannot personally solicit funds from any subordinate or from any person known to you to be a prohibited source of this Agency that may be substantially affected by the performance or nonperformance of your official duties. In addition, you cannot use or permit the use of your EPA official title, position or affiliation to further any fundraising effort.

* * * * *

As always, if you have any questions, please feel free to contact me at (202) 564-1786 or fugh.justina@epa.gov.

cc: Melissa Hoffer, Acting General Counsel
James Payne, Designated Agency Ethics Official
Victoria Clarke, Deputy Ethics Official, OGC

From: [Fugh, Justina](#)
To: [Ortiz, Adam](#)
Cc: [Clarke, Victoria](#)
Subject: approval of outside activity -- Pyramid Atlantic, a local arts organization
Date: Sunday, January 2, 2022 2:19:00 PM

Hi Adam,

You have asked whether you may continue to serve on the board of Pyramid Atlantic, a local arts organization. While this specific activity does not trigger the regulatory requirements for seeking prior approval set forth by EPA supplemental regulations, we nevertheless encourage political appointees to seek prudential advice about any outside activity, compensated or not. We appreciate your doing so in this instance.

For political appointees seeking to engage in outside activity, we coordinate with the Chief of Staff. If the contemplated outside activity requires prior approval consistent with 5 CFR 6401.103, then we obtain the concurrence of the Chief of Staff as the supervisor for political appointees. If the contemplated outside activity will be compensated or involves any political activity, then as a policy matter, we coordinate with the Chief of Staff as a policy matter.

You have sought advice from OGC/Ethics with respect to three different outside activities: (1) participation in a band, perhaps compensated, that includes a Region 3 employee; (b) (6), (b) (5) [REDACTED] and (3) serving on the board of Pyramid Atlantic, a local arts organization (<https://pyramidatlanticartcenter.org/>). We have already approved participation in the band, (b) (6), (b) (5) [REDACTED]. This email confirms only that you may proceed with continuing to serve on the board of the Pyramid Atlantic, provided that you observe the following ethics reminders:

REPRESENTATIONAL CONFLICT OF INTEREST

You are generally prohibited by a criminal law from representing another entity back to the federal government in any matter in which the United States is a party or has a direct and substantial interest. See 18 U.S.C. § 205. Thus, if the Pyramid Atlantic Arts Center has to interact with the federal government, you will have to recuse. This representational conflict of interest law will preclude you from inviting a federal employee to speak in official capacity before Pyramid Atlantic, and if they interact or communicate with any other federal official or agency, you must recuse. You are reminded to consult with an ethics official before, for example, attending any meeting at which a federal employee is presenting or speaking in official capacity.

FINANCIAL CONFLICT OF INTEREST

Because you are serving in a fiduciary role, the interests of the Pyramid Atlantic Arts Center are imputed to you under 18 U.S.C. § 208. You have a financial conflict of interest with them, which extends to both particular matters in which they are a party or represent a party as well as to matters of general applicability that include them as a member of an affected class. If, for example, your region wants to find an Earth Day project for the office, don't suggest the Pyramid Atlantic Arts Center.

MISUSE OF POSITION

Do not refer solely to your EPA position or title in connection with this outside activity, including any listing on their website. I noticed that their [current website](#) identifies you solely with reference to your prior local position. Going forward, you will not be permitted to be identified solely with your EPA position. If you do reference your EPA position, then it may be done only if it's one of several significant biographical details (include at least two others) with EPA not having any undue prominence. See 5 CFR § 2635.807(b). If you reference EPA at all, then I recommend also that the bio include a statement that you are serving in your personal capacity only. Alternatively, you may omit any reference to your current EPA position and affiliation and, if so, need not include the disclaimer.

FUNDRAISING

In your personal capacity only, you may engage in fundraising for the Pyramid Atlantic Arts Center, but under the federal ethics rules, you may NEVER personally solicit contributions from any subordinate or from any person whom you know to be a prohibited source of the Agency's (meaning any one doing business with or regulated by EPA). This prohibition extends to use of your social media. You can NEVER use your EPA position or title in connection with any fundraising efforts.

REPORTING OBLIGATION

This position must be included on your financial disclosure report and will be addressed in your recusal statement as well.

Please let Victoria Clarke or me know if you have any questions regarding this advice.

Happy New Year!

Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

September 16, 2021

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Outside Activity
JUSTINA

FROM: Justina Fugh FUGH
Alternate Designated Agency Ethics Official and
Director, Ethics Office

TO: Ya-wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention

Digitally signed by
JUSTINA FUGH
Date: 2021.09.16
11:15:44 -04'00'

I have received your request for approval to participate as an uncompensated outside activity related to the publication of a manuscript by the Environmental Law Institute. You confirmed that the manuscript, "Six Priority Recommendations For Improving Conservation Under The Endangered Species Act," was written and accepted for publication prior to your federal service and that your current EPA position and title will not be referenced at all.

Both Michal Freedhoff, your immediate supervisor, and Dan Utech, Chief of Staff, concur in this request. You are therefore approved for this activity. If you have any questions, please feel free to contact me at (202) 564-1786.

From: [Mosley, Ferne](#)
To: [Villa, Clifford](#)
Subject: RE: Request for approval of outside activities
Date: Tuesday, September 20, 2022 9:56:00 AM
Attachments: [Which lane are you in-official v personal capacity.pdf](#)

Hi, Cliff - sorry for the delay; Justina said we can approve you to engage in these in your personal capacity. A few guidelines to remember and please review the attachment:

1. You may only refer to your EPA title as part of general biographical information along with other information about your professional and educational career (at least 3), and you may not give your EPA position more prominence than other aspects of your experience.
2. You should give a disclaimer that you are appearing in your personal capacity and not as a representative of the EPA or the federal government and that the views you are expressing are your own and not those of the Agency or the federal government;
3. You must use annual leave unless your supervisor approves a small amount of administrative leave for professional development;
4. you may not use non-public information that you learn from your EPA position
5. you must report travel reimbursements and related expenses paid for by a non-federal source on your 2023 financial disclosure report in the following manner: if there is a travel item valued at \$166 or more, you add those and if, in the aggregate, the total amount of expenses is \$415 or more from a single source, you must report the travel reimbursement. For example, if your hotel is \$175, airfare is \$300, parking is \$15, you report the hotel and airfare which is \$475. If any item is less than \$166, don't add that to reach the \$415.
6. You may not accept an honorarium or any other payment to compensate you for your time.
7. Any tangible gifts must meet a gift exclusion or exception before you can accept it, e.g., a card or plaque or other item with little intrinsic value meant solely for presentation is acceptable; a crystal vase, a watch, or other item to thank you may not be accepted unless the value is \$20 or less. You may always return the item upon your return to avoid refusing it on-the-spot.

Please let me know if you have you have any questions.

Just note that your outside activities must be affirmatively approved before you may engage in the activity per the supplemental ethics regulation; even though it may take us awhile to get back to you (which it usually doesn't), you can't proceed with the activity unless it is approved.

Sincerely, Ferne

Ferne L. Mosley, Attorney-Advisor

Office of the General Counsel/Ethics Office
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW WJC Bldg, (North)
Washington, DC 20460
202-306-2998 (mobile)
202-564-8046 (desk)

From: Villa, Clifford <Villa.Clifford@epa.gov>
Sent: Tuesday, September 20, 2022 8:16 AM
To: Mosley, Ferne <mosley.ferne@epa.gov>
Subject: FW: Request for approval of outside activities

Good morning. I haven't heard anything back on this and need to make travel plans today ahead of actual travel next week. If any update on your end, it would be much appreciated. Otherwise, I'll proceed to make travel arrangements today in anticipation of your response.

Many thanks,

Cliff

From: Villa, Clifford
Sent: Wednesday, September 14, 2022 11:39 AM
To: Mosley, Ferne <mosley.ferne@epa.gov>
Subject: RE: Request for approval of outside activities

Thanks, Ferne. I was hoping you would be able to respond shortly. Among other things, I need to make travel arrangements asap for the Michigan conference.

Cliff

From: Mosley, Ferne <mosley.ferne@epa.gov>
Sent: Wednesday, September 14, 2022 11:37 AM
To: Villa, Clifford <Villa.Clifford@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>
Subject: RE: Request for approval of outside activities

Thanks, we will review the information with the appropriate parties and provide a response shortly.

Sincerely, Ferne

Ferne L. Mosley, Attorney-Advisor
Office of the General Counsel/Ethics Office
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW WJC Bldg, (North)
Washington, DC 20460
202-306-2998 (mobile)
202-564-8046 (desk)

From: Villa, Clifford <Villa.Clifford@epa.gov>
Sent: Wednesday, September 14, 2022 9:30 AM

To: Mosley, Ferne <mosley.ferne@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>
Subject: Request for approval of outside activities

Hi Ferne. In response to your guidance below, including the EPA regulations at 5 C.F.R. § 6401, this email serves as my request for approval from the EPA Deputy Ethics Official to participate in programs of environmental education, to include speaking as invited by colleges, universities, and graduate schools. In particular, within the next 12 months, I anticipate the following speaking engagements:

- University of Michigan Law School, September 29-30, 2022.
- College of Wooster, Wooster, OH. October 2022.
- University of Miami School of Law, February 2023
- University of Iowa College of Law, May 2023.

Specific responses to regulatory requirements at 5 C.F.R. § 6401(b) are provided below:

1. *Employee's name, grade, and title.* Clifford J. Villa, GS 15-1, Senior Advisor for Implementation
2. *Nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected.* Participating in programs of environmental education, to include delivering oral presentations with slides, speaking in my personal capacity, as invited by educational institutions and without compensation except for actual travel expenses.
3. *The name and business of the person or organization for which the work will be done.* Anticipated educational institutions in the coming year include the University of Michigan Law School, the College of Wooster, the University of Miami School of Law, and the University of Iowa College of Law.
4. *The estimated time to be devoted to the activity.* One hour for each presentation, plus travel time.
5. *Whether the service will be performed entirely outside of normal duty hours.* Speaking engagements may or may not be performed entirely outside of normal duty hours.
6. *The employee's statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment.* No official duty time or Government resources will be used in connection with speaking engagements conducted entirely in my personal capacity.
7. *The basis for compensation (e.g., fee, per diem, per annum, etc.).* No fee or per annum will be collected. Actual travel expenses may be paid directly by the inviting institution or reimbursed afterwards.
8. *The employee's statement that he or she has read, is familiar with, and will abide by the restrictions described in 5 CFR part 2635 and § 6401.102.* I have.
9. *An identification of any EPA assistance agreements or contracts held by a person to or for*

whom services would be provided. I am not aware of any such agreements or contracts.

If you have any related questions, please let me know.

Sincerely,

Cliff Villa

Clifford J. Villa, Senior Advisor
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Email: villa.clifford@epa.gov
Phone: (202) 981-4012

From: Mosley, Ferne <mosley.ferne@epa.gov>
Sent: Thursday, September 8, 2022 9:42 AM
To: Villa, Clifford <Villa.Clifford@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>
Subject: RE: Outside activities

Hello, Cliff – thank you for contacting us. I don't see a copy of your prior requests in our shared drive and we've had several personnel changes over the years. You may send an email with the required information per the EPA supplemental ethics regulation, [5 CFR 6401](#), as stated here:

(b) **Form and content of request.** The employee's request for approval of outside employment shall be submitted in writing to his or her Deputy Ethics Official. The request shall be sent through the employee's immediate supervisor (for the supervisor's information) and shall include:

- (1) Employee's name, title and grade;
- (2) Nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;
- (3) The name and business of the person or organization for which the work will be done (in cases of self-employment, indicate the type of services to be rendered and estimate the number of clients or customers anticipated during the next 6 months);
- (4) The estimated time to be devoted to the activity;
- (5) Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);
- (6) The employee's statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;
- (7) The basis for compensation (e.g., fee, per diem, per annum, etc.);
- (8) The employee's statement that he or she has read, is familiar with, and will abide by the restrictions described in [5 CFR part 2635](#) and [§ 6401.102](#); and

(9) An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.

Please let me know if you have any other questions.

Sincerely, Ferne

Ferne L. Mosley, Attorney-Advisor

Office of the General Counsel/Ethics Office
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW WJC Bldg, (North)
Washington, DC 20460
202-306-2998 (mobile)
202-564-8046 (desk)

From: Villa, Clifford <Villa.Clifford@epa.gov>

Sent: Thursday, September 8, 2022 7:06 AM

To: Fugh, Justina <Fugh.Justina@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>

Cc: Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>

Subject: Outside activities

Hi Justina and Ferne. Thank you for all your assistance so far in ensuring compliance with federal ethics requirements concerning my recent return to EPA. As you know, I was appointed to the OLEM Immediate Office with a number of anticipated outside activities, including specific teaching, writing, and speaking commitments. Most immediately, as disclosed, I have committed to speaking at a conference on environmental justice at the University of Michigan Law School, Sept. 29-30, 2022. Again, I will be speaking in a personal capacity, not on behalf of the University of New Mexico, U.S. EPA, or any other entity. I will not be receiving honorarium, although I do anticipate the University of Michigan will cover travel expenses.

As I recall, to confirm compliance with applicable regulations at 5 C.F.R. § 6401.103, I need to prepare a short memorandum, sent through my immediate supervisor, for approval by the Deputy Ethics Official. I have prepared such memos in the past to support outside teaching and writing activities when I was in EPA Region 10. If you can possibly send me a copy of one of my prior memos on file or any other generic example, that would be very helpful. I will then discuss my anticipated activities and draft memo with my immediate supervisor before sending the memo to your office for approval.

If there is anything else, or in the alternative, that I should know or do to ensure compliance with federal ethics requirements, please let me know.

Sincere thanks,

Cliff Villa

Clifford J. Villa, Senior Advisor
Office of Land and Emergency Management

U.S. Environmental Protection Agency

Email: villa.clifford@epa.gov

Phone: (202) 981-4012

WHICH LANE ARE YOU IN?	
Official Capacity (on behalf of EPA, as an employee)	Personal Capacity
<p>Generally ...</p> <ul style="list-style-type: none"> Consistent with statutory authority and Agency or office mission and assigned duties. Need supervisory approval to engage in the activity. Cannot be compensated by an outside party. <p>Use of Government Time, Resources and Non-Public Information</p> <ul style="list-style-type: none"> You can use official time on the activity, consistent with supervisory approval. You can use EPA resources including computer, copier, EPA email address or phone number, administrative support. You cannot use non-public information. <p>Identifying Yourself and Disclaimers</p> <ul style="list-style-type: none"> Use your official title. Depending on the level of review, you may need to include a disclaimer. <p>Social Media</p> <p>Relatively few employees are responsible for maintaining or using EPA's official social media posts. See EPA's policies on official use of social media.</p>	<p>Generally ...</p> <ul style="list-style-type: none"> If what you want to do qualifies as an "outside activity" under EPA's supplemental ethics rules, you may need prior written approval from an ethics official. You may not be compensated if the activity relates to official duty. <p>Use of Government Time, Resources and Non-Public Information</p> <ul style="list-style-type: none"> Refrain from engaging in personal activities on EPA time. Do not use your EPA badge, email address or other EPA identifiers when acting in your personal capacity. Personal use of the EPA equipment is permitted only in accordance with EPA's limited personal use policy, which allows for <i>de minimis</i> use, but never for prohibited activities such as charitable fundraising, lobbying, political activity, compensated outside activity or illegal activities. There is no expectation of privacy in the federal workplace or when using EPA equipment or resources. Remember, your alternate work location is considered federal workspace when you are on Flexiplace and the ethics rules apply the same when you work remotely as when you are in the office. Do not use nonpublic information, which is any information gained through EPA employment that you know or should know has not been made available to the general public, is exempt from disclosure, or that has not been authorized for release. You may not take pictures inside federal buildings (including private buildings leased by federal occupants; e.g., EPA Region 10) without the permission of the occupying Agency. 41 C.F.R. § 102-74.420.

WHICH LANE ARE YOU IN?

Official Capacity (on behalf of EPA, as an employee)	Personal Capacity
	<p>Misuse of Position and Representing Back</p> <ul style="list-style-type: none"> • Avoid appearing to misuse your EPA position for your own personal gain or for the gain of others or to create the appearance that the federal government endorses your personal activities. <i>Avoid deliberate use of your EPA position or affiliation to bolster your personal position or to lend it greater or emphasized credence.</i> For example, you could carry a sign at an event that says “I love puppies.” You could even carry a sign that says, “Federal employee loves puppies.” But you should NOT carry a sign that says “EPA employee loves puppies.” • In your personal capacity, you cannot represent the interests of a third party back to the federal government, regardless of whether you are compensated. 18 U.S.C. §§ 203 & 205. For example, you could write a letter to your Senator, expressing your personal opinion about a proposed legislative action, but you could not write and sign a letter on behalf of a third party about the same proposed action. <p>Identifying Yourself and Disclaimers</p> <ul style="list-style-type: none"> • You can reference your official title if it is one of at least three biographical details you provide and you make it clear that you are speaking in your personal capacity, not in your official capacity or on behalf of EPA. You might also need to include a disclaimer. • If you don’t mention your EPA position, you do not need to include a disclaimer. • If it is clear from the language or context of your speaking or writing that you are representing personal rather than Agency views, then you have addressed endorsement concerns, but you

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	<p>still must be careful not to use your EPA position for private gain. See Misuse of Position, above, and OGE letter 10 x 1.</p> <p>Social Media</p> <ul style="list-style-type: none"> • The ethics rules apply to social media just as they do to other forms of communication. • Because there is no expectation of privacy in the federal workplace or when using EPA equipment or resources, <i>we recommend against using EPA equipment, server, etc. to access personal social media accounts.</i> • Do not use or post nonpublic information in personal social media accounts. • Because you are generally prohibited from taking photos inside federal office space, you, therefore also should not post such photos to your personal social media accounts. • The Office of Government Ethics has a terrific legal advisory on ethics and personal use of social media. <p>Fundraising</p> <ul style="list-style-type: none"> • Don't use your EPA position to further outside fundraising efforts. There are some restrictions when engaged in fundraising, even on personal time. 5 C.F.R. § 2635.808. • You can't ever personally solicit funds from a subordinate or from a "prohibited source," which is any entity or person who is doing business with EPA, seeks to do business with EPA or is regulated by EPA.

From: [Mosley, Ferne](#)
To: [Nance, Earthea](#)
Cc: [Fugh, Justina](#)
Subject: RE: more re: onboarding
Date: Friday, December 17, 2021 1:42:38 PM

Hello, Dr. Nance – to follow-up on your outside writing activities:

Justina spoke with Dan Utech and she advised me that he has approved you continuing the two writing projects outlined below. However, there's one restriction for the encyclopedia – you *may not* accept the (b) (6) compensation or direct the Oxford University Press to donate it to a charity of your choosing. As a non-career SES, your compensation restriction on outside teaching, speaking, and writing that relates to your official duties means, “any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period; (2) Any ongoing or announced policy, program or operation of the agency; or in the *case of a non-career member of the Senior Executive Service, (3) the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his agency.* (emphasis added).

Because the subject matter of the *Oxford Encyclopedia of Water, Sanitation, and Global Health* is within a general area of the EPA's programs and operations, you may not accept the compensation. Unfortunately, giving you the authority to direct the payment to a charity of your choosing does not cure the compensation aspect because it still gives you the authority to direct the payment elsewhere and take a charitable deduction for tax purposes. So, in other words, you have to serve as a volunteer and let the organization determine where the money will go without your involvement.

Ethics rules to be mindful of regarding your outside writing activity:

-

With regard to your continued participation on the matter for the Oxford University Press, you may not use any non-public information or government time, including the time of a subordinate EPA employee, to continue the work on the encyclopedia. You may continue the work using your own time and public resources. Generally, when writing for a scientific journal or publication, you may refer only to your official title, but you must provide a prominent disclaimer that, “*the views expressed by the author are her own and not those of the U.S. government or the Environmental Protection Agency.*” However, you may choose to avoid any possible criticism by referring only to your non-EPA affiliations and educational background, or you may include your EPA position as part of general biographical information giving it no more prominence than other aspects of your educational or professional background.

For the writing activity with the U.S. Global Change Research Program, this is a writing activity sponsored by the federal government so it is permissible for you to use official time to work on this activity in furtherance of a federal publication and refer to your official title.

Please let me or Justina know if you have any questions.

Sincerely, Ferne

Ferne L. Mosley, Attorney-Advisor

Office of the General Counsel/Ethics Office
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW WJC Bldg, (North)
Washington, DC 20460
202-306-2998 (mobile)
202-564-8046 (desk)

From: Earthea Nance (b) (6)
Sent: Thursday, December 9, 2021 10:09 AM
To: Mosley, Ferne <mosley.ferne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Re: more re: onboarding

Thanks, Ferne. I had sent Justina questions in two emails, so just to double check, I will resign the 4 boards but I can keep the two authorships, right?

-E

On Wednesday, December 8, 2021, Mosley, Ferne <mosley.ferne@epa.gov> wrote:

Hello, and we'll be looking forward to welcoming you to EPA next week! I've reviewed your outside activities identified below and will recommend that the Chief of Staff permit you to continue those as I don't see any ethics issues, but you will have to make sure that you only refer to your EPA position, if at all, as part of general, biographical information. I'll explain more about that when we give you a comprehensive ethics briefing.

I just want to confirm that it is your intention to resign from all other outside boards, commissions, and positions (with the exception of your university position) upon appointment, and that you will have no continuing teaching or other advisory obligations to your students remaining once you come on board.

Thanks, Ferne

Ferne L. Mosley, Attorney-Advisor
Office of the General Counsel/Ethics Office
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW WJC Bldg, (North)
Washington, DC 20460
202-306-2998 (mobile)
202-564-8046 (desk)

From: Earthea Nance (b) (6)
Sent: Wednesday, December 8, 2021 2:09 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Mosley, Ferne <mosley.ferne@epa.gov>

Subject: Re: more re: onboarding

Thanks so much, Justina. I will wait to hear from Ferne.

-E

On Wed, Dec 8, 2021 at 12:02 PM Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Earthea,

Congratulations on getting the news that you can start next week! With this email, I'm introducing you to Ferne Mosley, who is a senior ethics attorney and who will be working with you on your financial disclosure report and your recusal statement. Ferne will also be providing your initial ethics briefing next week. I'm referring your questions to her for response. She's terrific! Oh, (b) (6)

Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Earthea Nance (b) (6)

Sent: Tuesday, December 7, 2021 10:47 AM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: more re: onboarding

Hi Justina,

Two more questions along the same lines.....

1. I am on a chapter writing team for the Fifth National Climate Assessment (NCA5), published by the US Global Change Research Program (<https://www.globalchange.gov/nca5>). No pay, but prestigious and by invitation only. I have been actively engaged with the writing team and we have produced a draft and are on schedule. Can I continue?

Here is a copy of the description of the organization from its website:

The U.S. Global Change Research Program (USGCRP) is a federal program [mandated by Congress](#) to coordinate federal research and investments in understanding the forces shaping the global environment, both human and natural, and their impacts on society. USGCRP facilitates collaboration and cooperation across its 13 federal [member agencies](#) to advance understanding of the changing Earth system and maximize efficiencies in federal global change research.

2. I am on a chapter writing team for the Oxford Encyclopedia of Water, Sanitation, and Global Health, published by Oxford University Press (a not-for-profit organization with an office at 198 Madison Avenue, New York, New York 10016). Prestigious, and with the option of receiving (b) (6) or requesting the publisher to donate that amount to a charity of my choosing (I would choose the charity option). I have already drafted and submitted my parts of the chapter.

Thanks in advance for your guidance. I am so excited about joining the EPA.

-E